

## Chapter CXCIV.<sup>1</sup>

### FUNCTION OF THE HOUSE IN IMPEACHMENT.

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1. The managers. Section 467.

2. High privilege of questions relating to impeachment. Sections 468–470.

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**467. A summary of impeachment proceedings resulting in trial, with reference to methods of their institution, and the number and manner of appointment of managers on the part of the House.**

An examination of the comparatively few impeachment cases which have resulted in trial shows a wide variance in the manner in which preliminary investigations in the House have originated and in the method of selecting managers on the part of the House to conduct impeachment in the Senate.

The case of Senator William Blount, of Tennessee,<sup>2</sup> the first in the history of the Congress to reach trial, had its inception in a confidential letter from the President to the House.

The eleven managers selected by the House were elected by ballot. All were, of course, members of the Federalist Party.

In this, and in the two cases following, procedure was through special committees, as the Judiciary Committee did not come into existence as a standing committee until 1813.

The case of Judge Pickering<sup>3</sup> originated in response to a special message from the President, to which were affixed certain ex parte affidavits.

The special committee to which the message was referred having reported in favor of impeachment, and the report being agreed to by the House, eleven managers were elected by ballot, all of whom were from those voting for impeachment, seven being members of the majority party of the House and one of the minority party. The party affiliations of the remaining three are not of record.

Action against Judge Chase<sup>4</sup> was begun as the result of a formal statement in the House by Mr. John Smilie, of Pennsylvania, who incorporated in his remarks a statement made by Mr. John Randolph, of Virginia, criticizing the official conduct of Judge Chase.

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<sup>1</sup>Supplementary to Chapter LXIV.

<sup>2</sup>Hinds' Precedents, sections 2294–2318.

<sup>3</sup>Hinds' Precedents, sections 2319–2341.

<sup>4</sup>Hinds' Precedents, sections 2342–2363.

Two members of the select committee chosen to inquire into the charges were chosen from those opposing the investigation, but all of the seven managers, elected by the House by ballot had voted both for the investigation and in favor of impeachment. Four of them were members of the majority party.

The case of Judge Peck<sup>1</sup> originated as the result of a memorial by an individual, which was referred to the Committee on the Judiciary and was by that committee reported to the House with a recommendation in favor of impeachment.

Five managers were selected by ballot, three of whom served on the Judiciary Committee, three belonging to the majority party of the House and two to the minority.

In the case of Judge Humphreys<sup>2</sup> the Committee on the Judiciary, as the result of an investigation authorized by resolution, reported recommending impeachment.

Five managers were appointed by the Speaker, three from the Judiciary Committee and four representing the majority party of the House.

The first attempt to impeach President Andrew Johnson<sup>3</sup> was initiated by Mr. James Ashley, of Ohio, who rose in the House and impeached the President, submitting specific charges, which were by resolution referred to the Committee on the Judiciary for investigation.

Congress having adjourned without action on the subject, a second proceeding looking to impeachment was begun in the succeeding Congress and referred to what was known as the Committee on Reconstruction, which recommended impeachment.

Under authority conferred by resolution, the Speaker appointed seven managers, two of whom were members of the Committee on the Judiciary and six of whom were members of the majority party of the House.

The impeachment of Secretary of War William W. Belknap<sup>4</sup> resulted from an investigation by a select committee appointed to look into the affairs of the Government in general. On report of this committee, the Committee on the Judiciary was instructed to draw up articles of impeachment.

Seven managers were appointed by the Speaker, three of whom were from the Committee on the Judiciary and five of whom belonged to the majority party in the House.

Mr. William Lamar, of Florida,<sup>5</sup> rising in his place, impeached Judge Swayne, making specific charges, which were referred to the Committee on the Judiciary. The Judiciary Committee reported in favor of impeachment and, by resolution, a select committee was appointed to draw up articles of impeachment. This was in keeping with the procedure in each previous impeachment case, with the exception of that of Secretary Belknap, where, as in the case of Judge Archbald, following, the investigating committee reported the articles of impeachment.

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<sup>1</sup> Hinds' Precedents, sections 2364–2384.

<sup>2</sup> Hinds' Precedents, sections 2385–2397.

<sup>3</sup> Hinds' Precedents, sections 2408–2443.

<sup>4</sup> Hinds' Precedents, sections 2444–2468.

<sup>5</sup> Hinds' Precedents, sections 2469–2485.

Seven managers to conduct the impeachment of Judge Swayne were appointed by the Speaker, five of whom were members of the Committee on the Judiciary and four of whom were from the majority party of the House.

The original charges against Judge Archbald<sup>1</sup> were filed by a commissioner of the Interstate Commerce Commission in a letter to the President. Later, in the House, Mr. George W. Norris, of Nebraska, introduced a resolution asking that the President transmit this letter to the House. The letter having been messaged to the House by the President, was referred to the Committee on the Judiciary, which, after investigation, recommended impeachment.

Seven Members were named by resolution to act as managers, all of them members of the Committee on the Judiciary, the only instance in the history of impeachment proceedings in which all managers were selected from one committee. Four of the managers belonged to the majority party of the House.

In most of the cases cited a select committee was appointed by the Speaker to take the case of impeachment to the bar of the Senate. The function of this committee was simply to report to the Senate the fact that an impeachment had been voted in the House and to report back to the House that they had so reported to the Senate.

In some cases the Speaker appointed a select committee to draw up the articles of impeachment, the work of the committee being completed when the articles so drawn had been adopted by the House.

It is to be noted that managers have been selected in three ways:

(a) By resolution authorizing the Speaker to appoint managers and naming the number thereof;

(b) By resolution naming both the number and the personnel of the committee;

(c) By election by ballot.

In case of election by ballot a majority vote has been necessary to the selection of each of the seven managers.

Where six received a majority vote and the seventh (although the next highest) failed to receive a majority vote another ballot on the seventh manager was taken.

**468. A proposition to impeach a civil officer of the United States is presented as a question of constitutional privilege.**

**The inquiry into the conduct of H. Snowden Marshall, United States district attorney for the southern district of New York.**

**An instance in which a Member after submitting articles of impeachment which were referred to a committee of the House, later submitted amended articles of impeachment which were referred to the same committee.**

**The incorporation of unprivileged matter in a resolution proposing impeachment destroys its privilege.**

**A resolution directly proposing impeachment is privileged but the same is not true of one proposing investigation with a view to impeachment.**

**A Member submitting a privileged resolution proposing impeachment is entitled to recognition for one hour in which to debate it.**

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<sup>1</sup> Sections 7727–7741 of this work.

**A Member recognized to present a privileged resolution may not be taken from the floor by a motion to refer.**

On December 14, 1915,<sup>1</sup> Mr. Frank Buchanan, of Illinois, submitted as a privileged subject the following:

Mr. Speaker, by virtue of the power conferred on me by the Constitution of the United States as a Member of this House, and to the end that justice may be restored in the administration of the office of United States district attorney for the southern district of New York, I impeach H. Snowden Marshall, United States district attorney for the southern district of New York, for the following specific offenses:

1. He has corruptly neglected and refused to prosecute gross and notorious violations of law by the most powerful and dangerous criminal trusts and monopolies in the United States within his said judicial district.

2. He has prostituted the great office intrusted to him by the people to the service of the great criminal trusts.

He has used the powers of his said office for the purpose of publicly defaming, slandering, and libeling the good name of peaceful and law-abiding citizens of the United States, to their great injury.

4. He has violated persistently the eight-hour laws of the United States and of the State of New York.

5. He has corruptly neglected and refused to prosecute men who have made the port of New York within his said district a naval base for foreign belligerent powers.

6. He has corruptly neglected and refused to prosecute violators of the Federal statutes prohibiting the loading and shipment of explosives on ships carrying passengers.

And for other high crimes and misdemeanors.

On motion of Mr. Buchanan, of Illinois, the charges were referred to the Committee on the Judiciary.

On January 11, 1916,<sup>2</sup> Mr. Buchanan again asked recognition for a question of privilege and said:

I rise to offer a resolution amending my impeachment charges against H. Snowden Marshall and I desire to send the following resolution to the Clerk's desk, to be read.

The Clerk read as follows:

Whereas on the 14th day of December, 1915, certain charges of impeachment were presented in this House by me against the United States district attorney for the southern district of New York, H. Snowden Marshall; and

Whereas said charges were not accompanied by a resolution empowering the Judiciary Committee sufficiently:

Therefore I present the following amended impeachment charges contained in the resolution which I am now offering:

*Resolved*, That the Committee on the Judiciary be directed to inquire and report whether the action of this House is requisite concerning the alleged official misconduct of H. Snowden Marshall, United States attorney for the southern district of New York.

The resolution here details at length specific items, and concludes:

And in making this investigation, the said committee is hereby authorized to send for persons and papers, administer oaths, take testimony, employ a clerk and stenographer, and is also authorized to appoint a subcommittee to act for and on behalf of the whole committee whenever and

<sup>1</sup> First session Sixty-fourth Congress, Record, p. 240.

<sup>2</sup> Record, p. 913.

wherever it may be deemed advisable to take testimony for the use of said committee. The said subcommittee, while so employed, shall have the same powers in respect to obtaining testimony as are herein given to said Committee on the Judiciary, with a sergeant at arms, by himself or deputy, who shall serve the process of said committee or subcommittee and shall attend the sitting of the same as ordered and directed thereby. The Speaker shall have authority to sign, and the Clerk to attest, subpoenas for any witness or witnesses.

The expense of such investigation shall be paid out of the contingent fund of the House.

Mr. James R. Mann, of Illinois, made the point of order that the resolution was not privileged, in that it included a provision for the payment of expenses from the contingent fund of the House, and said:

To begin with, it provides for the payment of the expenses out of the contingent fund of the House, and under the rules no resolution providing for that is privileged unless it is reported from the Committee on Accounts.

That is far enough; but my colleague from Illinois has impeached this official and the House had referred that matter to the Committee on the Judiciary. Now he presents a resolution, not of impeachment, but a resolution authorizing a committee to make an investigation, which of itself is not a privileged matter.

The privileged matter is the impeachment. That is not concerned in this case. The Speaker could very readily see that if to-day I can impeach a judge or other official of the United States and have it referred to the Committee on the Judiciary and immediately thereafter present a resolution providing for an investigation, and that is privileged, then I am entitled to have an hour in the House in the discussion of that, and if that be voted down I can present another resolution, if it be privileged, in a little different form, and take another hour in the House, and if that be laid upon the table or something else be done with it, then I present another resolution along the same lines, and so on ad infinitum.

Now, the privilege is the presenting of the impeachment. A Member on his responsibility in the House impeaches an official of the Federal Government. That is a matter of high privilege. But when the House has disposed of that it is not a privileged matter to present another resolution referring to an investigation of that subject.

The Speaker sustained the point of order, and Mr. Buchanan withdrew the resolution and immediately reoffered it with the provision for expenses omitted.

Mr. Mann made the point of order that the resolution proposed an investigation with view to impeachment rather than impeachment as such, and was therefore without privilege. The Speaker sustained the point of order, and Mr. Buchanan withdrew the resolution.

Finally, on January 12<sup>1</sup> Mr. Buchanan again presented a resolution similar in form to that last offered omitting the preamble, and moved its adoption.

Mr. John J. Fitzgerald, of New York, interrupting at the conclusion of the reading of the resolution, moved that it be referred to the Committee on the Judiciary. Mr. Buchanan made the point of order that he had not yielded the floor.

The Speaker held that Mr. Buchanan was entitled to the floor for one hour to debate the resolution, at the conclusion of which Mr. Fitzgerald might move to commit, and recognized Mr. Buchanan.

After debate, on motion of Mr. Fitzgerald, the resolution was referred to the Committee on the Judiciary, yeas 133, noes 71.<sup>2</sup>

**469. A proposition to impeach civil officers of the United States presents a question of high constitutional privilege.**

<sup>1</sup> Record p. 962.

<sup>2</sup> For further proceedings in this case see sections 7747–7751, Chapter CXCV in this volume.

**The investigation of the Federal Reserve Board in 1917.**

**An arraignment of impeachment may interrupt the reading of the Journal or business proceeding under a unanimous consent agreement.**

**An instance in which a Member proposed impeachment individually and collectively against members of an official board.**

**Articles of impeachment were referred by the House to the Committee on the Judiciary.**

**In the absence of evidence to support charges the House declined to institute impeachment proceedings.**

**A member having submitted articles of impeachment, it was held that his privilege had expired.**

On February 12, 1917,<sup>1</sup> Mr. Charles A. Lindbergh, of Minnesota, rising to a matter of privilege, said:

Mr. Speaker, I rise to a point of the highest privilege to prefer impeachment proceedings.

Mr. James R. Mann, of Illinois, inquired if pending business under a unanimous consent agreement could be interrupted by the proposed matter of privilege.

The Speaker<sup>2</sup> said:

The gentleman can interrupt the reading of the Journal with a question of that kind. A question of the highest privilege takes precedence over everything.

Subsequently<sup>3</sup> Mr. Lindbergh, as a privileged subject, submitted the following:

Mr. Speaker and the House of Representatives, I, Charles A. Lindbergh, the undersigned, upon my responsibility as a Member of the House of Representatives, do hereby impeach W. P. G. Harding, governor; Paul M. Warburg, vice governor; and Frederick A. Delano, Adolph C. Miller, and Charles S. Hamlin, members, each individually as a member of the Federal Reserve Board, and also all of them collectively as the five active working members of said board, of high crimes and misdemeanors.

I, upon my responsibility as a Member of the House of Representatives, do hereby impeach the said W. P. G. Harding, governor; Paul M. Warburg, vice governor; and Frederick A. Delano, Adolph C. Miller, and Charles S. Hamlin, members, and each of them as members of the Federal Reserve Board, and also impeach all of them collectively as the five active working members of the Federal Reserve Board, of high crimes and misdemeanors in aiding, abetting, and conspiring with certain persons and firms hereinafter named, and with other persons and firms, known and unknown, in a conspiracy to violate the Constitution and the laws of the United States and the just and equitable policies of the Government, which said conspiracy developed and grew out of and was consummated from the following facts and acts, to wit:

Mr. Lindbergh then presented in detail fourteen charges upon which the arraignment was based. At the conclusion of the arraignment Mr. Lindbergh inquired if his privilege ceased with the presentation of charges. The Speaker replied that it did. Thereupon, on motion of Mr. Claude Kitchin, of North Carolina, the articles of impeachment were referred to the Committee on the Judiciary.

On March 3,<sup>4</sup> Mr. Edwin Yates Webb, of North Carolina, from the committee, submitted a report recommending that no further proceedings be had in the matter. The report was adopted by the House without debate.

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<sup>1</sup> Second session Sixty-fourth Congress, Record, p. 3117.

<sup>2</sup> Champ Clark, of Missouri, Speaker.

<sup>3</sup> Record p. 3126.

<sup>4</sup> House Report No. 1628.

**470. Questions relating to impeachment while of high privilege must be submitted in the form of a resolution to entitle the proponent to recognition for debate.**—On January 18, 1933,<sup>1</sup> Mr. Louis T. McFadden, of Pennsylvania, announced that he rose to a question of constitutional privilege relating to impeachment proceedings, and asked recognition for one hour.

Mr. Robert Luce, of Massachusetts, made the point of order that recognition to raise a question of constitutional privilege could not be granted unless preceded by a resolution or motion in writing.

The Speaker<sup>2</sup> sustained the point of order and said:

The rules of the House provide that the gentleman must send a resolution to the Clerk's desk in raising a question of constitutional privilege.

In order for the gentleman to have the right to make such a statement to the House, he must send a resolution to the Clerk's desk and have it read, on which the House may then act. The gentleman would then have one hour in which to address the House, if he presented a question of constitutional privilege.

Mr. McFadden submitted that he was entitled under the rules governing the presentation of questions of privilege to make a statement of his proposition.

The Speaker dissented and said:

Not prior to the submission of a resolution. That is true of a question of personal privilege, but the gentleman rises to a question of constitutional privilege. This can only be done by the presentation of a resolution upon which the constitutional question is based. A mere statement by the gentleman does not comply with the rules of the House. If the gentleman has no resolution involving a constitutional question, the Chair thinks he is not entitled to recognition. The gentleman must present a resolution in the first instance on which to base his statement to the House, and then would be entitled to one hour.

Mr. McFadden called attention to occasions on which impeachment proceedings had been set in motion through memorials and other methods than those referred to by the Speaker:

The Speaker rejoined:

When such memorials and petitions are presented to the House, they are referred to the committee having jurisdiction of the particular subject. If a Member of the House bases his question of privilege on a memorial or petition, the memorial or petition must first be reported by the Clerk, and then the House may take such action as it sees fit. If the gentleman has a communication of that character, let him send it to the Clerk's desk and the Clerk will report it. Then the House can take such action as it deems proper. The gentleman can not get the floor under the proposition he has presented at the present time unless he sends up a resolution or motion.

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<sup>1</sup> Second session Seventy-second Congress, Record, p. 2042.

<sup>2</sup> John N. Garner, of Texas, Speaker.